

5 JULY 46
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Friday, 5 July, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
CONFERENCE ROOM OF THE TRIBUNAL
Room 216
War Ministry Building
Tokyo, Japan

(9:00 A.M.)

PROCEEDINGS IN CONFERENCE ROOM

ON

1. Application of HIROTA, Koki,
for leave to file designated motions.
2. Application under Rule 6 (b)(1)
of the Rules of Procedure.
3. Application for permission to
file and serve excerpts instead of the
entire documents.

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Before:

HON. SIR WILLIAM WEBB, President
of the Tribunal and Member
from the Commonwealth of
Australia.

Reported by:
Jas. F. Barton.

Appearances:

For the Prosecution Section:

MR. JUSTICE A. J. MANSFIELD,
Associate Counsel, acting on behalf
of the Commonwealth of Australia;

R. H. QUILLIAM, Brigadier, Associate
Counsel, acting on behalf of
New Zealand;

THOMAS H. MORROW, Colonel;

MR. KENNETH N. PARKINSON.

For the Defense Section:

MR. FLOYD J. MATTICE;

MR. DAVID F. SMITH;

MR. GEORGE C. WILLIAMS;

MR. GEORGE A. FURNESS;

ARISTEDES G. LAZARUS, Lieutenant;

MR. WILLIAM J. McCORMACK;

MR. OWEN CUNNINGHAM.

For the Office of General Secretary, IMTFC:

MR. G. WALTER BOWMAN, Clerk.

For the Language Section:

DAVID F. HORNSTEIN, Ensign.

THE PRESIDENT: We have here a motion, or an application for leave to file a motion to quash certain parts of the Indictment on certain grounds, mostly on the absence of authority of General McArthur. The application is refused.

MR. SMITH: Can I be heard?

THE PRESIDENT: Well, we have already refused leave to file a motion in a similar case, on the same facts, and I must tell you that I want to be frank.

MR. SMITH: I assumed that, and I would like for the record to show my exception.

THE PRESIDENT: You can take any exception you wish. We cannot have these things argued day after day. That is the same proposition.

MR. SMITH: Will you allow the record to show my objection has been made and the fact that it was disallowed and allow me an exception to your ruling?

THE PRESIDENT: Yes, you will be allowed to do that.

The next application is under Rule 6(b) of the Rules of Procedure, an application by the Prosecution, I understand it to be, from exemption, or suspension of the rule on certain documents.

BRIGADIER QUILLIAM: I am appearing here for the prosecution. As the application sets out, there are certain large documents that contain many matters that are irrelevant to the matters at issue, such as the certificate of the interpreters, and it is submitted that the defense cannot be prejudiced if the application to submit excerpts is granted, but, to some extent, they would derive a benefit by irrelevant matters being kept out of the record.

THE PRESIDENT: I believe you will have the same objection that you had on Wednesday?

MR. McCORMACK: I cannot hear you?

THE PRESIDENT: Come up to the table, there is a chair vacant. You do not expect me to shout at you, do you?

(Mr. McCormack takes chair at table).

MR. McCORMACK: These documents differ in size, Mr. President, and we would like to see some here. This one here seems to be four pages and they are using only those parts of it that are marked in blue.

MR. FURNESS: Are they depositions? I thought a deposition was something where either side appears and cross-examines.

BRIGADIER QUILLIAM: They are not that,

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MR. FURNESS: They are mere statements, in other words?

BRIGADIER QUILLIAM: They are statements.

MR. FURNESS: I see you omit any reference to the officers in charge of taking them.

BRIGADIER QUILLIAM: The defense would have an opportunity of putting in their part of it.

MR. FURNESS: I would like to find out -- these are not long documents. They all appear to be short documents of about four pages, and we think the entire document should be put in.

THE PRESIDENT: I will refer it to the Court. There is nothing I can do about it. Do you have anything to say, Justice Mansfield?

MR. JUSTICE MANSFIELD: No sir.

MR. FURNESS: They are not long documents, they are not six hundred pages each. I think that counsel should give us the officer in charge so we can get hold of them through the proper authorities. It seems to me that it is an entirely different matter from a document of three or four or five hundred pages of reading. They are all short documents and we think we should get them all in.

THE PRESIDENT: You have the originals for inspection, don't you?

BRIGADIER QUILLIAM: Oh, yes.

MR. FURNESS: If we inspected all of these documents you would have nothing to do but show them to us.

MR. MATTICE: The distribution of the documents is not very lengthy.

BRIGADIER QUILLIAM: Our motive is to save time and not bring all these irrelevant matters -- it will save a lot of labor.

MR. McCORMACK: It will force us to make a copy of them and send them back to you again, but that is ineffective, it is not going to shorten your case at all, and as a result of this the defense is put in an embarrassing position.

THE PRESIDENT: What you mention may or may not be true. Do not forget that we are operating under a Charter which enables questions of this nature to be handled this way. It is a very difficult matter, to know what to do.

MR. McCORMACK: We have got to be very careful in this case. The only purpose of this is to try to make some new principles, and in order to have that you have got to have strenuous objections in order for these things to be tested; otherwise, it is not going to be worth

considering. In other words, we are making new laws at a meeting of this kind and it is not worth considering.

THE PRESIDENT: Well, we are not trying to make any new laws -- it is a matter of finding facts. Well, the originals will be available to you, and if they think it is in the interest of the defense to have further copies we will do so. At present I am inclined to allow you to get the originals as you suggest. I want to assist the defense as much as possible. The application is granted.

MR. FURNESS: Do I understand that in granting the application that it is not a ruling on the admissibility of it?

THE PRESIDENT: You are speaking of objections, Mr. Furness, saving all just exceptions?

MR. FURNESS: I mean in granting the application it is not a ruling on the admissibility of the evidence.

THE PRESIDENT: No. Let them tender the excerpts, then, on the admissibility of the evidence, you can object and have your objection acted upon, that they have no probative value.

MR. FURNESS: But my objection was to the reports submitted.

THE PRESIDENT: Well, it may be they will not be tendered -- I do not know. I hope that they will not be -- I would be happier if they were not.

MR. FURNESS: At the time they are presented, I mean.

BRIGADIER QUILLIAM: This is in order to save a lot of labor on the documents that are now being offered in evidence. The defense then, as I understand, they can be introduced on the next morning and the statement is made about that issue, to which defendant they relate and then they can object to them. They are only taken for their probative value. I do not know what issue or what defendant they would prejudice, but they could get up and make an objection to each one, so the Court will admit them for whatever probative value they have. That is a procedure that is understandable, as far as we are concerned.

THE PRESIDENT: I think what they want to prove is that they wish to show that these atrocities were systematically committed. I suppose that is what they want to use these for, to show that these atrocities were systematically committed.

BRIGADIER QUILLIAM: To show that some definite atrocity that was committed was not a

part of the rules of warfare.

THE PRESIDENT: It states that these people prepared for war, that they were prepared for war, and in doing that this type of war resulted, this war full of atrocities; and judging from the nature of these atrocities, of course, that they knew the punishment. To quote the language, it is a "quantum of punishment". That is relevant, as I see it. It would be very difficult to say that one certain defendant was associated with certain atrocities in a war. Anyhow, I will prepare to indulge such documents.

MR. JUSTICE MANSFIELD: The defense says they have not had an opportunity to see these documents, that they do not know what is in them yet.

MR. FURNESS: These are only filed twenty four hours ahead, and every defense counsel would be going to the Clerk's office to read them to find out if their client is involved, to find out what they can, and the Clerk would not have the time, and we would not have time to read them. The statement that we would have time to object or not object to them, it is a physical impossibility to do that.

MR. JUSTICE MANSFIELD: The facts you are saying, that the evidence is in your hands twenty-

four hours ahead of time, you can make up your minds to object to them then.

THE PRESIDENT: Those who have been to Nuernberg say that we are doing considerably more for the defendants here -- Lord Patrick is continually stressing that point. I do not know, I have not been there, but that is what others that have been there say, that we are doing much more for the defendants here than they are at Nuernberg.

MR. CUNNINGHAM: May I interrupt. All the defendants at Nuernberg are not represented by American counsel and we are here to see that something of an American trial is given to these people, under the American rules of evidence.

THE PRESIDENT: These are not rules of evidence, unfortunately.

MR. CUNNINGHAM: There must be a rule of evidence. It is inconceivable that a trial is being conducted here -- we are American counsel and we have to exercise a little more of what we understand to be a trial of justice rather than what they are doing at Nuernberg. We cannot reconcile it with what they are doing in Nuernberg.

THE PRESIDENT: Of course, that is a different case, but those that have been there say that

we are doing far more for the defendants here than they are in Nuernberg.

MR. CUNNINGHAM: And they are submitting newspaper articles and everything here.

MR. JUSTICE MANSFIELD: The point is, that they were prepared for this trial and understand these things fully.

MR. CUNNINGHAM: For all we know perhaps someone else has been convicted for something that these affidavits are now being introduced, and we want to know what is in them.

MR. FURNESS: I think there is a ruling in Nuernberg that, if excerpts are offered and are read into Court, the law demands that the person or party reading them to show that these excerpts reflect a true picture and that they do not in any sense mislead the Court or the accused and that is an important matter in this trial here.

THE PRESIDENT: I think whatever is being done in Nuernberg to protect the defendants will be done here, I cannot speak for all of the Judges but I think that is their attitude.

MR. FURNESS: Then in these affidavits, if there are parts that favor the defendant, would they be allowed to be read?

THE PRESIDENT: Now the next application is an application by the Prosecution for permission to file and serve excerpts instead of the entire document, and there are some twenty-five items listed.

MR. McCORMACK: I am going to object to this application being presented here. That is a matter that is going to take some time to go into each one of these. The prosecution is just jumbling up documents and everything else. Many of the documents in this case are voluminous and it is too important to the defendant concerned to have a hearing in Chambers, and for that reason I want to make an objection.

MR. PARKINSON: I am appearing here on the part of the prosecution as I have sat in on the presentation of prior motions of this nature and I will say that there are in this application approximately thirty documents referred to. This is the first sixteen relating to the presentation of documents. In relation to No. 17, IPS Document #1505, et al, we cannot withdraw the Document without breaking down the whole processing of it, but we have stated the story relating to this. Item No. 3, IPS Document #490, refers to a book, for instance, by HASHIMOTO, commenting on the

Ladybird and Panay Incidents.

THE PRESIDENT: Why cannot you give him the interrogatories?

MR. PARKINSON: It is probably the entire interrogatories will go in, I do not know.

THE PRESIDENT: I think they ought to get a complete copy of the interrogatories. I think that is the minimum.

MR. PARKINSON: The other relates to excerpts from newspapers.

MR. McCORMACK: These things are newspaper editorials they are trying to put in evidence in this case. I can take the Chicago Tribune and indict every person in England and America if I could use editorials from newspapers. It is ridiculous.

MR. PARKINSON: I am not talking about editorials. Here is a news item complete within itself.

MR. McCORMACK: It is an editorial if I can read anything, and I am objecting to it. We do not want to enter into any long controversy about that but they are referring perhaps to my client, but if that is not an editorial I do not know what it is.

MR. PARKINSON: It is IPS Document No. 2135. (Handing paper to the President).

MR. McCORMACK: This is an article in a Japanese newspaper and they pick out one line and sketch what it is, and that is an editorial, no doubt, and they want to put in excerpts for the whole speech. That is the lowness to which this case is going, and I am objecting to it.

MR. JUSTICE MANSFIELD: If the Court please, I am objecting to counsel's remark about the lowness to which this case is going. I do not know what he is talking about, the object of this remark. Counsel have been rather evasive to us, to say the least, on the allegation of lowness.

THE PRESIDENT: You are conducting the case on a high standard, I think.

MR. PARKINSON: There is no editorial offered here. These are two news items that appeared in a Japanese newspaper.

THE PRESIDENT: I suppose you will contend that that is real evidence, what the accused said.

MR. McCORMACK: That is what I want to know, the contents of the article, so we can get the article and see what is in it. If they cannot

get the articles we can get them.

MR. FURNESS: There are certain items that we object to. It simply states that this is a document that is six inches thick and has so many pages. It does not state what the document is or state what part of the document they want to introduce. He does not state what the particular document is; he just gives the number of the IPS document, and I think on this application we are entitled to know what the entire document is, because without that we cannot analyze it. We cannot tell whether we want to object to it or not.

THE PRESIDENT: I had better read this, but I will not have time. I will have to adjourn consideration of this matter until a quarter after four.

MR. McCORMACK: Is that application going to be before the eleven man Court?

THE PRESIDENT: No, it will not be before the eleven judges, but we only have ten judges now.

MR. McCORMACK: I want to preserve my objection on behalf of my client, MINAMI.

THE PRESIDENT: It is adjourned until a quarter past four.

(Whereupon, the hearing was adjourned until 1615).

Friday, 5 July 1946

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(Hearing on application for permission to file and serve excerpts instead of entire documents was resumed at 1615).

Appearances:

For the Prosecution Section:

THOMAS H. MORROW, Colonel;
MR. KENNETH N. PARKINSON.

For the Defense Section:

MR. WILLIAM J. MCCORMACK;
MR. FRANKLIN E. N. WARREN;
MR. OWEN CUNNINGHAM;
MR. GEORGE A. FURNESS.

For the Office of General Secretary:

MR. G. WALTER BOWMAN.

MR. CUNNINGHAM: We have a delegation coming but I am here to protect their interests until they get here.

THE PRESIDENT: Well, I think I had better go over this. Are all counsel here now? No. 1, IPS Document No. 15, being a volume of 253 pages concerning intercepted messages of the Japanese government prior to Pearl Harbor. That portion desired by the prosecution consists of three pages, and is restricted to messages concerning China.

Well, I do not suppose, really, that there is any likelihood of the balance of that being brought in.

MR. McCORMACK: If the Court please, here is one thing: First, we have none of these exhibits at all, and for them to come in here and use any excerpts in this document that they want to use -- we have no translators to enable us -- and after these matters are disposed of there are things which come to our attention from these excerpts that we wish we had knowledge of when the motion was made. For instance, we find many matters were not described or any facts mentioned, and I would have to know whe-

ther my client was interested in all this or not. We do not get anything tangible from the way it is described in this application, about these intercepted messages of the Japanese government. If they just take excerpts from messages and put them in they are not -- in other words, I do not know whether it is possible to prove these things or not, as we have no idea what they are about; we do not know whether we should object to them until they put them in, and for that reason I object to it.

MR. PARKINSON: In relation to Document No. 490, I am informed that it is a book document. When this document was up for processing we examined the original to see what portion of it we wanted to put in, and on the basis of that we made a request for translation of that portion of the document. Now at this time we will not know, as they have not been returned to us and processed; but in relation to IPS Document 15, it turns out to be a report from an investigating committee of Congress consisting solely of intercepted messages delivered to them, presumably by the Army, and as to that particular document I think we know --

MR. CUNNINGHAM: Is that No. 1?

MR. PARKINSON: Yes. Now as to IPS Document No. 488, we have just been able to examine that. It is a publication of a diary written by HASHIMOTO, Kingoro, and we are interested in his discussion of Ladybird and the sinking of Chinese junks by a destroyer just out of Nanking, and that is the only thing we are interested in this.

As to IPS Document No. 605, we ran into this situation. You mentioned this morning that we ought to describe the title. It so happened that we got the document numbers from the Japanese filing system. Instead of taking a stack of telegrams or messages or speeches as the most important and filing them they simply will take a period of six months or a year and file them together, and frequently there is no title to it. In the document they have there may be a period of three thousand years in there, but whoever scanned it in the office says, as far as the military crisis in China is concerned, that there are only ten pages we desire to use of this document.

MR. McCORMACK: You are on No. 3 now. On No. 2 we have got counsel's statement that the books are seldom used. Do I understand that you

are putting that in as evidence?

MR. PARKINSON: As I understand, counsel do deliver to the Court the original from which we make the excerpts.

MR. FURNESS: You mean deliver it to the Secretary?

MR. PARKINSON: Yes, to the Secretary.

MR. McCORMACK: Now No. 3 is a document five inches thick, and you only want to use ten pages of it. It is a confidential report from the Japanese Army in China, particularly a report of 24 July 1939. Now, this will be in one volume and you will want ten pages, and it will be certified by the Japanese government here that it is authentic?

MR. PARKINSON: It may or may not be. Some of these documents -- take Document No. 605 -- was supplied to our document room from Washington. I think IPS Document No. 605 has been authenticated, that we received authentication from the Japanese government, but I do not think we should be called upon to do that, to show in a particular instance that a document received from the Washington Document Section should be named a document at all, but an agency of the government.

MR. McCORMACK: It states the proper time to object to the authentication is when it is offered in evidence.

MR. PARKINSON: As I have said, this No. 605 is approximately five inches thick, with no numbered pages, and this is more or less due to the filing system. We have asked for a specific number of pages dealing with one thing. As I get your objection, your objection is to the whole of Document No. 605?

MR. McCORMACK: We want to know what you have got in all of these things. The question that is before this Court, only excerpts of that are to be used, and in order to be logical about it, I presume, is to ask for particular parts of it, the authenticity, et cetera.

MR. PARKINSON: There will be a certificate of authenticity.

MR. WARREN: From what I understand, you have a series of documents which, I understand, are bound into a volume of only one document?

MR. PARKINSON: It is one document. That is on account of the Japanese filing system, as I get it.

MR. WARREN: If these matters are entirely unrelated -- they are still documents and we think we should be allowed to inspect them.

MR. PARKINSON: The application was made to ask leave of the Court to amend this motion on these specific documents. Let me illustrate -- This Document No. 1685, which was obtained from the Japanese Home Office, and it has to do with the so-called "Boxer Agreement" --

THE PRESIDENT: That is No. 12?

MR. PARKINSON: No sir.

THE PRESIDENT: That is prosecution Document No. 1685.

MR. PARKINSON: Oh, yes, sir. We have included in here -- this document consists of a hundred and thirty pages and the IPS desires the processing of only ten pages of it, that part that deals with the proposed solution of the China Incident, etc., as dealt with by SOTO, and this is complete within itself. This document was not made by us or the translation section, it is the exact words in a statement from the Japanese Home Office. As I say, the document consists of a hundred and thirty pages and this part we want to use is unrelated to the rest of the document, and I believe it can be extracted and

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used as a separate document, but we do not care to do that unless the Court so advises us.

THE PRESIDENT: They are down to -- we want some evidence to see.

MR. PARKINSON: If that is agreeable it will save us some time and avoid the necessity of these meetings.

MR. WARREN: I suggest that these documents are not documents at all, but are just evidence by somebody in the Japanese government, completely unrelated documents, and when you come in to introduce them in Court, the whole thing, you will have thousands of pages to read.

MR. PARKINSON: That is true, but let me say this, if this would assist you, and it would definitely assist us: if we could use a form of certificate, for example, IPS Document No. 1685, and other documents, as the case may be. There are approximately two pages in this document by SOTO that are entirely unrelated to anything else in the document, so far as we are able to ascertain, and, therefore, that portion is all that should be processed and offered in evidence, and it is complete within itself. And you have a Japanese Year Book, and I would say that is a fair illustration. It is

one of these documents here.

MR. McCORMACK: Were these speeches in the archives of the Japanese government?

MR. WARREN: Let us not take up the Court's time and the prosecution's time if what he says is true -- I am sorry.

MR. McCORMACK: Let us take this one thing, that you will probably run into, and this is a good example, Item 4 -- are these Japanese government officials, document No. 4?

MR. PARKINSON: Oh, yes.

MR. FURNESS: Are they complete in themselves?

MR. PARKINSON: I cannot answer that definitely but I would almost say "yes", that they are complete within themselves.

MR. McCORMACK: Now let us take item No. 5, which is a document approximately three inches thick, and the prosecution desires to offer only three pages dealing with the building and strengthening of a Mongolian army. Is that the same answer to that?

MR. PARKINSON: Yes, the same notion. This document is approximately three inches thick, as stated in the application. It is a series of reports from the Manchurian Army.

MR. McCORMACK: Reports to Japan?

MR. PARKINSON: Yes.

MR. McCORMACK: My original suggestion, I think, would really help us. Is there any reason why these excerpts cannot be furnished us before this application is made so we can see what is in them? If so, then we would not have to waste time; we could read them and pick out the parts that are material and we would not be taken by surprise.

THE PRESIDENT: That is a good suggestion.

MR. PARKINSON: Could I simplify it by saying, "Yes, you can expect a certificate from counsel presenting them", if you want to, "that whenever it appears that the document sought to be entered in evidence is complete within itself, such as the SOTO speech, that they may be offered and so done on such certificate without further ado." That would be proposition No. 1. Now proposition No. 2 would be that whenever you wish to offer an excerpt from a complete document, such as an excerpt from a speech, that is not a complete speech within itself, that that be subject to individual motion.

MR. McCORMACK: Yes, it would have to be.

MR. PARKINSON: That would save us the

reading of the entire speech.

MR. McCORMACK: Do you want to serve us with these documents or just talk about it later?

THE PRESIDENT: Would you like to confer on these topics? I think probably you can do a lot for yourselves that the Court cannot do. The Court is very much interested in this matter. The Court appreciates the importance of this matter, and we are out to assist the defense as far as we can. I hope the defense will keep that in mind, that we will be glad to help them.

MR. PARKINSON: I would be glad to act according to your Honor's suggestion and sit down in your office and go over these things.

THE PRESIDENT: You cannot do that with twenty six counsel.

MR. McCORMACK: We can offer, or we will sit down with counsel. I do not have authority from the other defendants, and I cannot say what is in the mind of other counsel, whether they would authorize us to act for them, but, as I see it, it is a good opportunity to do those things, because I think we can help ourselves.

MR. WARREN: If we had extra counsel, like your standing committee, we could work that out.

MR. McCORMACK: My suggestion was for them to give us copies of these excerpts, and when we get the copy, then we could read them and know which defendant is in it, and we could sit down and agree on it.

THE PRESIDENT: What do you mean by copy?

MR. McCORMACK: Just a copy of the excerpts they wish to use, so they could see whether their client was involved or not.

THE PRESIDENT: You mean you want to see the excerpts before the application is presented? You signed a statement to the effect of asking the Court to use these.

MR. PARKINSON: May I interrupt? In general, what he states is quite correct, but this is in one situation. I referred to it more or less in blanket. In paragraph 17, IPS Documents Nos. 1093-1156-1338, and so on, the document consists of approximately two hundred and fifty pages each, of which we make a request for an average of three or four pages from each document to be processed for introduction into evidence. This volume has been placed with a private agency for translation and processing. Now, if I call the Document Section to find out whether it is complete, or whether it

is the filing system -- I just cannot answer that specifically.

MR. McCORMACK: If you sent them in ahead of time that would be already straightened out.

MR. WARREN: We are attempting to avoid as much work as possible. As a matter of fact, in this instance, where you take the Japanese file, say the Sugamo prison record, which is unrelated to the other, you might say it is a document, but it is a series, or a number of documents.

MR. PARKINSON: I can say that we can agree on that as a principle, and then, if you desire a certificate from counsel, it will be furnished, and that applies to both the prosecution and the defense.

MR. WARREN: I think if counsel will put on their excerpts from documents, file such and such a document, stating that it has been properly certified to, that that would answer our purpose. I am not speaking for the Japanese counsel, but in the interest of my two clients.

THE PRESIDENT: Could you have a small committee joined dealing with these documents?

MR. McCORMACK: Our committee on this stuff, that is, the committee that is handling it, I am the only here of the committee today.

MR. WARREN: I might state that with twenty-eight lawyers that is difficult.

MR. PARKINSON: May I make a presentation here? If you could do that, it would solve many problems.

Now we come to newspaper articles. I think perhaps you misunderstood me this morning when I was speaking of editorials. I was talking about news items taken from Japanese newspapers, such as the Capture of Nanking --

MR. McCORMACK: Does it go down after item No. 21?

MR. PARKINSON: Yes.

MR. McCORMACK: In other words, the prosecution desires to offer news items from Tokyo newspapers, of papers published in Japanese, or in a Tokyo paper published in English, and so forth and so on. Well, as a matter of just figuring out whether you should use excerpts from newspapers, I would say that in so far as it goes to the question of whether or not under any circumstances a story in a newspaper would be evidence, I think we will thrash that out at the proper time.

MR. PARKINSON: That is a complete news release in a Japanese newspaper.

MR. WARREN: I think you gentlemen are getting this in a confusion, so if you refer to it as an editorial and then rely on it, we do not want the whole newspaper in there.

MR. PARKINSON: I refer to each newspaper, which is complete within itself, yet it is wholly unrelated to the other articles appearing in the paper.

MR. McCORMACK: As I see it, this motion is only to use excerpts from various documents. Then the question comes up as to whether that is a document. I do not think under the Charter a newspaper could be considered a document, but that will be raised when you try to put it in evidence.

MR. PARKINSON: You are not raising objection to it being an excerpt?

MR. McCORMACK: I do not think we should argue that in this proceeding. It is not an excerpt, it is a document. When I mentioned this morning to you here about excerpts from newspapers I knew what I was talking about, because I have got the item here that you are trying to introduce. That is when I was surprised, as I did not know my client was involved. This is No. 2135, an excerpt

from an article appearing in the Japan Times. This starts off with nine paragraphs of criticism of a speech. That is the reason I am interested in what is going on here -- I have got to be particular.

THE PRESIDENT: How about the interrogatories? I said today that you should give them the list, that there was no reason why they should not have it.

COLONEL MORROW: I think the Court would want the list on that, too.

MR. PARKINSON: There was this: that it relates to the military aggression in China, that that is the portion which it was proposed to offer at this stage of the case, and it is complete so far as it relates to military aggression in China. That the individual prosecutors will want to introduce later, I do not know. No doubt it will come up.

MR. McCORMACK: I suggest that this application be continued and that we be served with copies on these things, and I suggested to the Court at that time that we had not been served with a copy of these interrogatories, because I think it is only proper that it be furnished us in complete form.

THE PRESIDENT: These are not all affida-

vits -- these are statements of the accused themselves.

MR. McCORMACK: Well, maybe --

THE PRESIDENT: Another point my colleagues wanted me to try to get -- You stated the matter of these depositions and reports over in New Guinea and elsewhere in the Pacific. I think probably you may be able to continue that, too.

MR. McCORMACK: We can get them here.

THE PRESIDENT: Let us not call all the witnesses in.

MR. McCORMACK: That was merely a suggestion. Here is a court sitting in an anti-trust case, and this is the affidavit, and the Court will only allow eight or ten days on each document, but in criminal cases they do not resort to that kind of stuff.

THE PRESIDENT: I think what they want to establish is, to say that there is a statement. That is the idea, I think.

MR. WARREN: I expect some of it will be used against my client. I know it is utterly impossible to locate the affiants in some of these cases.

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MR. McCORMACK: We have got to do every-

thing we can to bring the witnesses here, or we cannot go back home and talk to anybody about this case. However, it is true that, unless the record shows we have at least been here representing these people -- I have no set ideas about these things -- they will say "where has the jackass been?" My view point is, that my client, MINAMI, is innocent, or I could not act in this case, as your Honor knows, and I want to be heard trying him. I have got to get these witnesses here if it is the last thing I do. Now, on these interrogatories, I want to know who the interrogator was, and everything about them. This is going to be one of the most serious things in this case. I have got to talk to the people that took the interrogatories, and I want everybody that my client ever talked to here; to call the interpreters and show that they were unable to interpret this statement, and if there are any lawyers downstairs they may figure that they are going to be witnesses in this case, too.

MR. PARKINSON: May I interrupt? This motion was lodged, that was, for filing, approximately a week ago, and so far as Colonel Morrow and I know, our phase of the case will start about Monday. It may be delayed -- I don't know --

but I want to know if we could get a ruling on one thing that we seem to be in accord on: that whenever a document is complete within itself, no matter if it is bound in with other speeches, that the document is complete within itself, and will be complete within itself, apparently unrelated to anything else. I am talking now, not of excerpts, I am speaking of complete documents. When the complete document --

MR. CUNNINGHAM: We have all got ideas on that, I think, a mere suggestion.

MR. PARKINSON: The point is, you are asking me to bring these things. Some of these things are now being processed and I do not see why it would not be agreeable for a certificate from counsel to be filed.

MR. CUNNINGHAM: We have a rule in the Charter requiring the prosecution to do certain things. That rule was put in there for the protection of the defendants and it ought to be complied with. In some cases, there are some exceptions, but what he says will be a helpful solution to keep them from asking for a violation of the rule. They ought to be told before asking -- this is no Court trying a case. I know these are little violations of the rule but they ought to

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be complied with. This certificate, you say, should solve that problem. If they do that it will probably be satisfactory to us. Now, on the question of these interrogatories, they will have to come in every time, as we will have to see who took the interrogatories. After getting the interrogatories in they should give them to us so we will know what they are, so we can see what the defendant said to them, what stenographer took them, and see what part in them can be shown. I am interested in orderly procedure, and I do not think it is good to have a rule and then be coming in here every day and asking for an exception to the rule. We should not be in here spending our time and effort and taking exceptions to a ruling every day. I think it is an imposition on us and an imposition on the Court, and it expresses the weakness on their part in presenting the case, and if they do not do what the Charter says, they should do it.

MR. WARREN: That is a good point. They serve a document on us practically every day and many times it is entirely unrelated, and the prosecution, for some reason, calls them one volume, or one document, when, as a matter of fact, they are not one document, but are a series of documents,

and they come in here and ask for a ruling from the Court.

MR. CUNNINGHAM: That is what I say -- the Court sees that.

COLONEL MORROW: Take the Japanese Year Book, for instance, it has twelve hundred and thirty pages in it. That has nothing to do with the order or anything else, as it is a Year Book, a document, and we only propose to use about two paragraphs from this book.

MR. McCORMACK: Well, if you could set these things out clearly we would not have to come in here.

THE PRESIDENT: A Year Book speaks for itself, I think.

MR. McCORMACK: It is whether they left out something before or after the speech.

MR. CUNNINGHAM: About the newspaper article: you mentioned in the discussion that that pertains to General MATSUI.

MR. PARKINSON: That is another matter.

MR. CUNNINGHAM: Well, if they are mentioned you can rest assured that counsel will be here wanting to know the details. In each application, you should give at least enough information that we

would know what the article is.

THE PRESIDENT: Yes, that is your difficulty. You have a bunch of unrelated papers and name those you want to use, but you cannot use it because the certificate is on the back one, a certificate covering the whole lot, and that applies to the others and discloses that lot to either side, and they want to be sure that it is only one document; but suppose you have only one certificate covering all of those papers -- you could get a certificate for each of the documents if they are really unrelated, I suppose. We will have to trust you. You can get a certificate for each document and you will not have to come here, but if they are all in one bunch the presumption is they have some connection.

MR. McCORMACK: If they can identify the bunch as part of it. We do not care whether the certificate is from your office or from the War Department. We can rely on his certificate personally better than we can any Japanese certificate. We can check it to see if it is wrong.

MR. FURNESS: We do not have access to the whole bunch.

THE PRESIDENT: You will get a Japanese government certificate for every document you are

going to use, aside from the bunch of unrelated matters. I believe the defense would like to know where he got it, too.

MR. WARREN: If they are introduced in that manner, will the counsel introducing it put his certificate on it, certifying to the fact that it is unrelated to the others. They have the whole bunch on file but we cannot go up there and look at it.

THE PRESIDENT: Well, we have dealt with unrelated bunches and interrogatories. Is there something else we have to consider? There are other matters here, are there not? The Year Books speak for themselves and I do not have to rule about those.

MR. FURNESS: I think counsel should go back and find out about it.

THE PRESIDENT: Would you like to have a discussion among yourselves before --

MR. McCORMACK: We would like to see these things.

THE PRESIDENT: Well, I will adjourn this until that time.

MR. McCORMACK: Here is another thing that might be helpful: My client and my associates have come to me and told me that the newspapers are not

in the Second Demobilization Unit, that they have been taken over and are in the prosecutor's office, or somewhere else. We have had some excerpts offered from this bunch we are looking at, and we should have access to these documents. We do not like to come and make formal motions in Court, and we would like to know if there is some way we can look at these things. I just want to make sure it is preserved.

MR. PARKINSON: You are a wonder if you do. It is all in Japanese.

MR. McCORMACK: I understand from the Second Demobilization Unit that you took everything they had and did not sign a receipt for it. We have got to have those things to pick out these errors.

THE PRESIDENT: On this matter of six hundred and fifty affidavits, which my colleagues decided they had -- it looks as though we can allow the documents to be lodged, but you may have to have possession of the copy. It appears that what you should do is to give them the six hundred and fifty copies of the affidavits before you process the evidence, if you have them, within a month of using the excerpt -- I think I have properly stated that. That was all right until the prosecution was

given provision for copies of the affidavits.

MR. CUNNINGHAM: We have a problem about the diary, the document, and the Secretary is in Court, like the Court is, and we have to examine this information on our spare time. The Secretary's office is very seldom open when we are at liberty, and apparently some suggestion should be made for them to stay open until nine o'clock, or something like that, for examination of the documents until they are released, where the documents are lodged.

THE CLERK: They are lodged in my office.

MR. McCORMACK: What are your hours?

THE CLERK: We will arrange the hours to meet your convenience.

MR. McCORMACK: We cannot tell a couple of days beforehand whether we can be there or not. We have a meeting every night.

THE CLERK: I think I will have to take that up with the General Secretary and if you will give me an idea of the time --

MR. McCORMACK: I would say Saturday or Sunday, or any night. We have to meet these Japanese counsel -- they have ideas. One of them wanted to come down here yesterday but he lives a hundred miles from here and I told him not to waste his gas.

THE PRESIDENT: Well, I will adjourn this matter until a time to be fixed.

(Thereupon, the hearing was adjourned at 1700 until a time to be fixed by the President).